

## **REMARKS**

Claims 1, 3-22 and 35-38 are pending. Claims 1, 6 and 8 are amended. Claims 39-53 are new.

Issues outstanding:

- Claims 6 is rejected as indefinite under 35 U.S.C. § 112 ¶ 2.
- Claims 1, 3-6, 11, 15-16 and 18-22 are rejected under 35 U.S.C. § 102(e) as anticipated by Ando et al. (US 2004/0018190, filed 11/22/01).
- Claims 1, 3-7 and 11-22 are rejected under 35 U.S.C. § 103(a) as rendered obvious by Kruzel et al. (US 2003/0096736, filed 5/7/02).
- Claims 1, 3-22 and 35-37 are provisionally rejected for potential judicial double patenting over co-pending application 10/862,213.
- Claims 1, 3-7, 11-13, 15-17 and 20-22 are provisionally rejected for potential judicial double patenting over co-pending application 10/434,769.
- Claim 38 is objected to for dependency on a rejected claim.

### **I. 35 U.S.C. § 112 ¶ 2**

Claims 6 is rejected as indefinite under 35 U.S.C. § 112 ¶ 2.

Claim 6 is amended to clarify its meaning. Applicant requests the Examiner withdraw the rejections in view of the above amendment.

## **II. 35 U.S.C. § 102(e)**

Claims 1, 3-6, 11, 15-16 and 18-22 are rejected under 35 U.S.C. § 102(e) as anticipated by Ando et al. (US 2004/0018190, filed 11-22-01). Applicant has amended the claims to specify pain from surgery. Ando does not disclose treatment of surgical patients. Applicant requests the rejection be withdrawn.

## **III. 35 U.S.C. § 103(a)**

Claims 1, 3-7 and 11-22 are rejected under 35 U.S.C. § 103(a) as rendered obvious by Kruzel et al. (US 2003/0096736, filed 5/7/02). Applicant has amended the claims to specify pain from surgery. Kruzel does not disclose treatment of surgical patients. Applicant requests the rejection be withdrawn.

## **IV. Judicial Double Patenting**

Claims 1, 3-22 and 35-37 are provisionally rejected for potential judicial double patenting over co-pending application 10/862,213. Applicant submits with this response a terminal disclaimer to co-pending application 10/862,213. Applicant requests the rejection be withdrawn.

Claims 1, 3-7, 11-13, 15-17 and 20-22 are provisionally rejected for potential judicial double patenting over co-pending application 10/434,769. Applicant submits with this response a terminal disclaimer to co-pending application 10/434,769. Applicant requests the rejection be withdrawn.

## **V. Objection**

Claim 38 is objected to for dependency on a rejected claim. Claim 38 is not in dependent form. Applicant requests the objection be removed.

In view of the above, Applicant believes the pending application is in condition for allowance. Claim 38 was objected to for form but otherwise deemed allowable. New claims 39-53 depend from claim 38 and thus are also allowable. Claim 8 was rewritten into independent form but otherwise unchanged. Thus claims 8-10 and 35-37 are also allowable with the submission of the terminal disclaimers accompanying this response. The Examiner has searched for prior art relevant to claims 1, 3-7 and 11-22. These claims are narrowed from surgery or cancer pain to surgery pain. Thus, in view of the Examiner's search on record, no new search is required. With the art of record now distinguished, Applicant respectfully requests the Examiner allow the pending claims.

Applicant submits with this request for continued examination the required fee. Applicant has previously paid for 34 total claims and 3 independent claims. Currently 40 total claims and 4 independent claims are pending. Applicant submits with this response payment for 6 additional claims and 1 additional independent claim. Two month's extension is request the fee for which is submitted with this response. Applicant believes no other fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2375, under Order No. HO-P02705US2 from which the undersigned is authorized to draw.

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Respectfully submitted,

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